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FM AMEMBASSY NAIROBI
TO RUEHC/SECSTATE WASHDC PRIORITY 9414
INFO RUEHDS/AMEMBASSY ADDIS ABABA PRIORITY 8177
RUEHDR/AMEMBASSY DAR ES SALAAM PRIORITY 4453
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY 3944
RUEHKM/AMEMBASSY KAMPALA PRIORITY 1123
RUEHLO/AMEMBASSY LONDON PRIORITY 1851
RUEHFR/AMEMBASSY PARIS PRIORITY 1833
RUCNFB/FBI WASHINGTON DC PRIORITY
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RHMFIUU/CDR USCENTCOM MACDILL AFB FL PRIORITY
RHMFISS/CJTF HOA PRIORITY

UNCLAS NAIROBI 000550

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LONDON AND PARIS FOR AFRICA WATCHERS, L/LEI FOR D. BUCHHOLZ
AND K. MUELLER, DOJ/OIA FOR P. ROWAN

E.O. 12958: N/A

TAGS: [CJAN](#) [CVIS](#) [KCRM](#) [SNAR](#) [KE](#)

SUBJECT: UPDATE: EXTRADITION OF KAROLI MULIRO

REF: A. (A) STATE 17590

[1](#)B. (B) 05 STATE 227184
[1](#)C. (C) 05 STATE 180672

[11](#). (U) This is an action cable - action request para 5.

[12](#). (SBU) Post has engaged directly with the Director of Public Prosecutions (DPP) Keriakio Tobiko, and held lengthy discussions with the case prosecutor, Horace Okumo, concerning the U.S. extradition request for Karoli Muliro to stand trial in Massachusetts. Post first engaged the Kenyan government on the day of Muliro's release (December 28). Well before receipt of ref A, Post sent a diplomatic note of protest on December 30. In addition, Post has also spoken with the magistrate who acceded to Okumo's request to withdraw the state's bid for extradition.

[13](#). (SBU) The issue appears to rest on confusion between Kenyan law and U.S. law and the types of crimes covered by the extradition treaty. The exact charge Muliro is facing, "vehicular homicide while under the influence," does not exist as such in Kenyan law. While both manslaughter and homicide do exist and are extraditable, homicide while driving a motor vehicle is technically not an offense covered by Kenyan law. The Traffic Act has a separate charge for manslaughter while under the influence. This case has also suffered from an inter-ministerial communication problem, as the police arrested Muliro on the basis of the Embassy's October 7 diplomatic note without waiting for the proper legal arrest order from the Attorney General or DPP.

[14](#). (SBU) Post has made clear that we do not understand the reason for the termination of the proceedings (the prosecutor told us he feared losing the case; the judge told us subsequently all appeared in order). We have also asked that Muliro be rearrested as a flight risk. Okumo stated he simply needs confirmation from Massachusetts authorities that the crime alleged to have been committed matches crimes in Kenya and is covered by the extradition treaty. With those assurances in hand, he stated, Kenya would both rearrest and pursue extradition. DPP Tobiko has provided similar assurances.

[15](#). (SBU) In late January, Post placed prosecutor Okumo in direct email contact with the prosecutor in Massachusetts. We

do not know, however, the result of their conversations.

ACTION REQUEST: Post would appreciate information as to the status of efforts to provide Okumo informally with what he seeks before we again submit a diplomatic note. In particular, we would appreciate any information regarding the precise information that Okumo requires to proceed with Muliro's extradition. Please advise.

¶6. (U) Text of diplomatic note previously submitted follows, for Washington's information:
(No. 1748, December 30, 2005)

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Kenya and wishes to make renewed reference to the Extradition Treaty between the United States and the United Kingdom of December 22, 1931, made applicable to Kenya by exchange of notes dated May 14 and August 19, 1965, and entered into force on August 19, 1965. The Embassy requests that the Government of Kenya, specifically the Attorney General of the Republic of Kenya, take any and all steps necessary to effect the immediate arrest and extradition of KAROLI MULIRO. In this regard, we also wish to make renewed reference to Diplomatic Note No. 1433, of October 7, 2005.

Mr. Muliro's case was terminated in the High Court of Kenya on December 28, 2005, at the previous request of the Office of the Attorney General. While the Embassy has yet to be formally notified of this action by Kenyan authorities, the Embassy was informed informally that the basis for this termination rested on two conclusions reached:

¶11. Failure of the Kenyan Police to follow proper procedures: &Order from the proper Ministry.⁸
¶12. The offense Muliro is charged with does not meet the elements agreed upon between the United States and Kenya for extradition.

The Embassy requests that the Government of Kenya re-visit this issue urgently on the basis of the following information, which does not appear to have been taken into consideration in reaching these conclusions:
On October 24, 2005, the Minister of Home Affairs sent a letter to the Commissioner of Police, Kenya Police Headquarters, MFA.390/420/002A. In this letter the Permanent Secretary, D.C. Kitogho, referenced the United States request

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for the arrest and extradition of KAROLI MULIRO. Mr. Kitogho instructs the Kenyan Police to, &Kindly and urgently respond as you may wish to investigate.⁸ Based upon this response from the Permanent Secretary Kitogho, the Kenya Police CID located and arrested Mr. Karoli. The letter from the Permanent Secretary was in response to our Diplomatic Note No. 1433, dated October 7, 2005. A copy of the letter from the Permanent Secretary is enclosed (as Exhibit A). A copy of the Diplomatic Note is also enclosed(Exhibit B).
In response to the issue of Mr. Karoli being charged in the United States for an offense that arguably does not meet the specification set out in the extradition treaty, the Embassy draws attention to a previous case heard in the Chief Magistrate's Court at Nairobi, Misc. Case No. 22 of 1986. In this case, THOMAS ANTONY WILLIAMSON was brought before the court after being arrested under a provisional warrant in pursuance of a warrant of arrest issued in California for the offense of manslaughter and driving under the influence. In this case Chief Magistrate H.H. Buch ruled the following:
&Upon being satisfied as to the identity of the prisoner to be that of the person required by the Department of State, United States of America for the alleged offense of Manslaughter which is an extraditable one and upon being satisfied with all documents produced in support, I now order that the prisoner Thomas Antony Williamson upon completion of his current term of imprisonment, be handed over to Interpol Section of Criminal Investigation Department Headquarters, Nairobi for the purpose of extradition to United States of America as requested.⁸

This order was signed by Chief Magistrate H.H. Buch on May 5, 1986. A copy of this ruling is enclosed (Exhibit C).

Additionally, regardless of any specific actions or inactions by the Kenya Police, presently there is an active Interpol Red Notice (Control No.: A-2049/12-2005) for the arrest, pending extradition, of KAROLI MULIRO. Kenya's membership in Interpol and the issuance of the Red Notice alone provide Kenyan law enforcement authorities with all the legal basis necessary to arrest Mr. Muliro. As Interpol's website notes, Red Notices serve to communicate to the world's police that a suspect is wanted by a member country and request that the suspect be placed under provisional arrest pending extradition.⁸ A copy of the Red Notice for Mr. Muliro's arrest is enclosed (Exhibit D).

Presently a Diplomatic Note, No. 1710, conveying the original &Request for Extradition⁸ from the United States of America is in the hands of the Office of the Minister of Home Affairs awaiting delivery to the court. This official request was hand-delivered by U.S. Embassy courier on December 21, 2005. The Embassy requests that the Ministry of Home Affairs expedite this request so that the United States can fulfill all the obligations set forth in our Extradition Treaty. A copy of this Diplomatic Note and the Request for Extradition has also been enclosed (Exhibit E). A complete copy of the documents in support of this request are attached to the original request that is now in the hands of your Minister of Home Affairs.

Finally, the Embassy notes with dismay that its officers were never approached for clarification on either of the conclusions said to have been the basis for the decision to not pursue extradition. Indeed, both American and Kenyan employees of the U.S. Embassy had gone to the Court to attend the extradition hearing scheduled for December 28 (where such issues were to have been discussed before and decided by the judge) -- only to learn then that the State had unilaterally withdrawn its case days earlier.

Given his record of having already fled the U.S. jurisdiction (despite having posted bail and being ordered not to depart), his years as a fugitive in Kenya, his pattern of international travel to Uganda from Kenya, and the Kenyan court's decision to previously withhold his passport, we continue to believe Mr. Muliro poses a significant flight risk. We therefore seek that Kenya authorities move with dispatch to arrest Mr. Muliro at this time.

In conclusion, the Embassy renews its request for the immediate arrest of Mr. Karoli Muliro pending extradition. As the Embassy has never been informed officially to the contrary, we also consider the original Request for Extradition contained in Diplomatic Note No. 1710 as still currently valid and of full force and effect. We request immediate notification if the Government of Kenya believes to the contrary. We ask that the materials in Diplomatic Note No. 1710 be presented to appropriate court authorities as soon as possible and that the Embassy be provided confirmation of the delivery of said documents. As always, the Embassy stands ready to assist Kenyan authorities in any and all stages of this process. We also formally offer to assist the competent Kenyan authorities in establishing a clear and streamlined process for assuring smooth execution of provisional arrest and extradition requests, in either direction, between our two countries.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Kenya the assurances of its highest consideration.

Enclosure:
Documents &A8 through &E8 as described in text.

Embassy of the United States of America,
Nairobi, 30 December 2005.

BELLAMY